

Judicial intervention and industrial relations: exploring industrial disputes cases in West Bengal¹

Abstract

This paper examines a relatively neglected dimension of industrial relation in India namely judicial intervention in industrial disputes. Through an interrogation of judicial intervention in capital-labour disputes in the state of West Bengal, the paper makes an original contribution to the literature. Through quantitative as well as qualitative examination of court cases, the paper addresses some important questions such as what is the nature of judicial intervention. Does the declining force of trade union movements signify a corresponding shift to judicial recourse or an increasing pro-labour judiciary? How are the disputes read by the judiciary, do they adhere to a strict legalistic understanding or does their intervention involve going beyond the letter of the law? Is there uniformity in the nature of verdict along the spectrum of the judiciary i.e. from the labour tribunals to the higher judiciary (High Court/Supreme Court)? Through an extensive case-study of court judgments from labour tribunal to High Court to Supreme Court (where applicable), it situates the answers to these questions in the unique context of the sub-state of West Bengal with its specific political framework. Investigating the disjuncture between the legal prescriptions and their invisible implications, or between the jurisprudence at different levels, the paper provide clues to understanding not only the way judicial intervention plays out but also the way in which industrial relations are managed and understood in the context of West Bengal.

¹ This paper comes out of fieldwork conducted for an Indian Council for Social Science Research funded project on “Trade Union and Collective Bargaining in Urban Labour Markets: The Case of West Bengal”

Introduction

Industrial relations constitute an important element in the structure of any modern economy with economic, political and social consequences. Conventional understanding of industrial relation confines it to the interplay of capital (business), labour (trade unions and workers) and state (government). Under researched in this context, however, is the role of the judiciary that influences industrial relations through adjudication, precedents and verdicts.

The judicial system in any state is entrusted with the complex task of resolving disputes between contesting parties through the application of legal principles. It is in the court's continued litigation in the right spirit that the legitimacy of a democracy and reinforcement of people's faith in the judiciary is vested. Thus adjusting the competing interests of labour and capital becomes an important part of the judiciary's duties. The attitude of the judiciary on issues of industrial jurisprudence have far reaching ramifications for industrial relations such as workers' rights, collective bargaining, industrial discipline and so on. As Welch² has argued, it was legal abstention from industrial disputes in England that weakened labour movement and paved the way for corporatist strategy to secure labour cooperation. The way judiciary perceives mobilisation and collective action has significant implication for power dynamics between labour and capital. Intuitively, the declaration of strike action as illegal by the court or adoption of social justice principle by the courts will have far-reaching implications for labour movement and consequently industrial relations. As such judicial efficiency, attitude towards collective bargaining, perception of social justice and application of legal principles shape, if not determine, the nature of industrial relations in any society.

² Welch, R. (1995). "Judges and the law in British Industrial Relations- Towards a European right to strike". *Social and Legal Studies* 4, 175-196.

In the context of India the role of the judiciary has received some attention particularly with regard to the issue of strikes (Goel and Kaam³). At a more macro level, however, there is a dearth of literature on the judiciary and its role in industrial relations. This paper attempts to fill in the gap and contribute to the understanding of judicial intervention in industrial relations. It makes an original contribution to the relatively neglected field of study of role of judiciary in industrial disputes using statistical data and close study of judicial verdicts in some representative cases.

Judicial intervention and industrial relation

At a theoretical level, the role of the judiciary in responding to societal requirements has been the subject of jurisprudence and legal research. Nonet and Selznick proposes a three-stage model to understand the role of the law and judiciary in responding to societal needs ⁴ . In the first stage, the law functions as an instrument of coercion in the hands of the dominant social and political forces. In the second stage of formal rationality, it seeks to preserve institutional integrity. In this stage, the law becomes insulated with narrow responsibilities and adopts formalism as its index of integrity. In the third and final stage, the law becomes responsive to exigencies of the social environment. It is different from the first stage in that in this stage, the law is more geared to meet societal needs. This framework of judicial response to social requirements can be incorporated in the reading of industrial relations jurisprudence.

Studies of judiciary and jurisprudence across the world illustrate that different countries lie in different stages of the spectrum. As Tucker points out judicial perception of industrial action

³ Goel, A. and P. Karn (2011). "The Curious Case of Right to Strike Under the Indian Constitution - A Comparative Perspective". *NLIU Law Review*. Kolkata: National Law Institute University Kolkata.

⁴ Nonet, P. and P. Selznick. (1978). *Law and Society in Transition: Towards Responsive Law*. Transaction Publishers: New Brunswick.

is conditioned by prevailing political dynamics⁵. He argues that a shift in Canadian judiciary from its previous unmitigated hostilities towards the workers' rights to safeguarding collective bargaining rights represented an altered political dynamic. While a vibrant trade union movement was feared and hence opposed, with the decline in trade unions, collective bargaining through the courts became a pressure-valve technique⁶. In a study of judicial intervention in United Kingdom Simpson⁷ has found that the attitude of the court on question of application of judicial review in trade union matters altered significantly between 1980's and 2000's. This marked difference in judicial approach can be attributed to the difference in underlying legislations of the two periods, with the more radical aims of the earlier trade union movement attracting a less sympathetic and more interventionist judicial response. Clearly, the judiciary in its attitude towards industrial relations and trade unions has been antagonistic to radical movements but supportive of institutionalised legalistic unionism typical of emaciated labour movements. Studies elsewhere⁸ illustrate that with the declining force of trade union militancy, adjudication has emerged as predominant mode of conflict resolution. Judicial recourse to dispute settlement and collective bargaining and nature of judicial intervention in such cases reflect the prevailing milieu of labour movement and wider political dynamics.

At a specific level, the study of judicial intervention is instructive to evaluate the efficiency of the overall industrial relations system. There exists literature that emphasise on judicial efficiency for healthy industrial relation and macro-economic growth⁹. Fagernas argues that a trend of high judicial efficiency and swift dispute disposal might lead to an

⁵ Tucker, E. (2008). "The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of Canada", *Labour / Le Travail* 61.

⁶ *ibid*, 171-172.

⁷ Simpson, B. 2007. "Judicial control of the CAC " *Industrial Law Journal* 36 (3)..

⁸ For e.g. see Cohen, T. (2004). "Understanding Fair Labour Practices-NEWU v CCMA", *South Africa Journal of Human Rights*, 20.

⁹ *Ibid*.

expansion of the regularised organised sector¹⁰. Evidence from the last twenty years illustrates that a correlation exists between delay in dispute disposal, lessening of number of disputes brought for adjudication and the growing informalisation of employment¹¹. What gets established through this is that efficient dispute resolution by the judiciary even indirectly offers higher social protection to the workers, irrespective of whether judgments are pro-worker or not. Judicial efficiency leads to higher share of organised workers in the industry.

This role of the judiciary has become more relevant in the context of liberalisation, as instances of judiciary facilitating deregulation and flexibility of the labour market have been noted across the world. In France the left wing government used the state apparatus including judiciary to decentralise industrial relations¹². The use (non-use) of state machinery, rather than formal labour reforms towards deregulation has been the strategy for governments with significant labour support. As Amable¹³ has argued the Left, in France, relied on decentralized bargaining with the social partners because the political base would not have accepted flexibility increasing legal reforms.

The preceding discussion suggests that examination of the role of judiciary is an important component of any evaluation of industrial relations as well as the prevalent political-social dynamics. Apart from highlighting the context of capital-labour relations, judicial intervention also indicates the institutional dimension of industrial relations. Evaluating the nature of disputes through the prism of judiciary provides a new perspective to industrial relations. Recourse to legal means to settle disputes indicates complete breakdown of

¹⁰ Fagernas, S. (2010). "Labour Law, Judicial Efficiency and Informal Employment in India", *Journal of Empirical Legal Studies* Vol. 7(2).

¹¹ Mahmood, Z. and S. Banerjee (forthcoming). "The State in Industrial Relations".

¹² Amable, Bruno. 2016. "The political economy of the neoliberal transformation of French industrial relations " *Industrial and Labor Relations Review* 69 (3)..

¹³ Ibid.

industrial relations within the firm thus revealing the most contentious issues of dispute between labour and employer. Such a study can also reflect on the institutional framework of industrial relations, as regulations and judicial pronouncements shape the balance of power between employers and workers. Moreover, the study shows how the courts interpret such disputes. As labour disputes enter the direct domain of the judiciary there is a growing trend of reading industrial relations through constitutional labour laws¹⁴. While judgements are in the nature of legal pronouncements, they differ from other laws in their scope for interpretation. Judgments can limit themselves to administering a set of procedural rules, but it could also actively facilitate dispute resolution through creative means. Mundlak and Harpaz¹⁵ (2002) hold that labour disputes provide judges the scope to apply broad, flexible and discretionary standards in a way that best fits the needs of the disputing parties.

In the context of labour adjudication, Saini¹⁶ has pointed out that while doctrinal research on labour laws and adjudication abound in India there has been hardly any empirical study on this. Our study addresses this gap. Through an in-depth study of industrial dispute cases, this article maps how the judiciary balances such conflicting functions of the law with the complexities of industrial relations. The case studies will give us an insight into whether the courts takes a formalistic approach whereby it acts as a gatekeeper of procedural law, negating the scope for extra-legal interpretations or does it act as an industrial mediator pushing the parties towards a creative settlement. In the process it will also highlight some salient features of industrial relations.

¹⁴ Cohen (n8) 390.

¹⁵ Mundlak, G. and I. Harpaz (2002). "Determinants of Israeli Judicial Discretion in Issuing Injunctions Against Strikers" *British Journal of Industrial Relations* 40(4).

¹⁶ Saini, D.S. (1999). "Labour Legislation and Social Justice: Rhetoric and Reality" *Economic and Political Weekly* 34(39).

Industrial Jurisprudence in India

In India the key legislation that governs industrial disputes is the Industrial Disputes Act 1947 (IDA hereafter). The central act provides for an elaborate framework of structures, rules and procedures to settle disputes between employers, between employer and employees and between employees. The overall framework of industrial relations reflects the values of the India Constitution especially the principle of empowering the powerless and downtrodden. Both the Central and state governments, since Independence, have enacted several labour laws with the understanding that the relation between employer and employee cannot be arbitrary and fanciful but rather based on rules¹⁷. The judiciary has a central role in the realisation and maintenance of the vision enshrined in the laws and the constitution. In the decades following independence, the judiciary played a commendable role in the progressive articulation and interpretation of these laws¹⁸. The judicial system in India was credited with having built a strong edifice for the protection of labour rights. Justice Krishna Iyer in the case of *Indian Express News Papers IM. Ltd. Vs Indian Express News Papers Employees Union*, said that, “*industrial jurisprudence is not static, rigid or textually cold but dynamic, burgeoning and warm with life. It answers in emphatic negative to the biblical interrogation...The Industrial Tribunals of India in the areas unoccupied by precise block letter law, go by the constitutional mandate of social justice in the claims of the ‘little people’*”¹⁹.

The onset of economic liberalisation has however, altered the political-economy context of industrial relations with consequences for industrial jurisprudence. Proponents of reforms have repeatedly highlighted that economic reforms have not been supplemented by labour

¹⁷ Hashim, K.S. Mohammad (2008). “Not for the Labour”. *Combat Law: Human Rights and Law Bimonthly* vol 7(6): 46.

¹⁸ Saini n(16) 32.

¹⁹ Babu, S. and R. Shetty. (2007). *Social Justice and Labour Jurisprudence: Justice V.R. Krishna Iyer's Contributions*. Sage Publications :New Delhi, p. 256.

market reforms leading to slower pace of growth. The industry-unfriendly labour legislation is often projected to be a repellent of foreign direct investment in India as compared to other emerging markets²⁰. Despite the lack of formal reforms, all available records suggest significant liberalisation of labour market in India with increasing flexibility and duality in labour market²¹. Singh among others show that with the decline in labour militancy through the 1990s, the employers took a militant role²². Factories were shut not because of workers' strikes but locked out by the managements. There were absconding legal dues and various other strong-arm tactics.

At a time when labour right have been weakened as a result of economic policies, employer practices and executive indifference, the manner in which the judiciary addresses labour rights issues is of critical importance. The limited existing literature on the theme suggests that since the mid-1990s Indian judiciary, has, in fact been quite instrumental in institutionalising this labour disempowerment. There has been a paradigmatic shift in the understanding of the Indian judiciary on the question of labour rights. The human rights and law bimonthly *Combat Law*²³ through its various articles show that the judiciary in India both at the apex level of the Supreme Court and at the state level of High Courts for most states have abandoned the compassionate, humane and equitable approach that it earlier had towards labour rights issues. Hashim²⁴ through evidence of verdicts of Supreme Court and Kerala High Court shows how the judicial machinery works towards curtailing the power of the Labour Court and Industrial Tribunal. The result of these changes has been evident in the

²⁰ Rao, E.M. (2001). "Globalisation and dispute settlement process " *Indian Journal of Labour Economics* 44 (3).

²¹ Davala, S. 1992. *Employment and unionisation in Indian industry*. New Delhi: Friedrich-Ebert-Stiftung; Deshpande, Lalit, Alakh N Sharma, A Karan and S Sarkar. 2004. *Liberalisation and Labour Market Flexibility in India*. New Delhi: Institute for Human Development; Sharma, Alakh N. 2006. "Flexibility, Employment and Labour Market Reforms in India." *Economic and Political Weekly*.

²² Singh, G. (2008). "Judiciary Jettisons Working Class". *Combat Law: Human Rights and Law Bimonthly* vol 7(6).

²³ *Combat Law: The Human Rights and Law Bimonthly* 2008, 7(6).

²⁴ Hashim (n7).

way some of the labour laws which formed the bedrock of Indian jurisprudence have now been denuded of their content to become instruments of labour repression²⁵.

Context

To interrogate the relationship between judiciary and industrial relations we look at cases of industrial dispute in the sub-national state of West Bengal. With over three decades of electoral dominance of the left parties, the state of West Bengal has been distinct in terms of political economy. Between 1977 and 2011, the state was governed by an alliance of left parties led by the Communist Party of India (Marxist). The electoral dominance of left parties with substantial support of labour ensured pro-labour legal framework and labour friendly executive leading to the conventional characterisation of the state as pro-labour²⁶. Labour being a subject in the concurrent list in the Indian Constitution, the constituent states have power to amend or enact their own labour laws over and above the ones enacted by the Centre to suit their own contextual reality. The choice of West Bengal is therefore as a unique case study with largely pro-labour legal framework. Within a larger context of a steady decline in pro-labour stance of judiciary in India, an in-depth study of nature of judicial intervention in industrial disputes in West Bengal is useful for understanding an important variant of judicial intervention.

Further an important gap in the existing literature on judicial politics is the neglect of regional High Courts especially courts in West Bengal. Together with the apex court, the High Courts have been instrumental in shaping the jurisprudence of India. While quite a few-

²⁵ Preeta, A.K. (2008). "Marginalised". *Combat Law: Human Rights and Law Bimonthly* vol 7(6): 59.

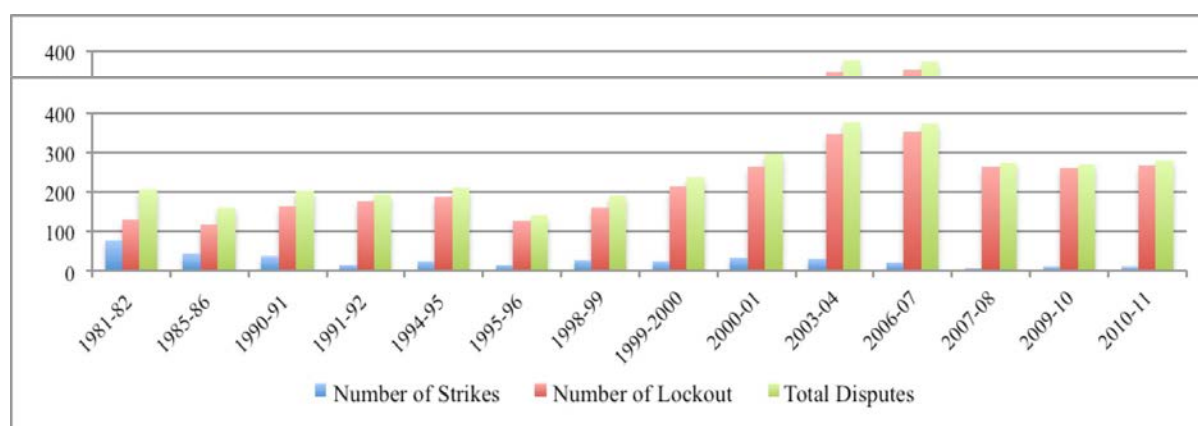
²⁶ See for example Besley, Timothy, and Robin Burgess. 2004. "Can Labor Regulation Hinder Economic Performance? Evidence from India." *Quarterly Journal of Economics* 119 (1):91–134; Aghion, Philippe, Robin Burgess, Stephen J. Redding, and Fabrizio Zilibotti. 2008. "The Unequal Effects of Liberalization: Evidence from Dismantling the License Raj in India." *American Economic Review* 98 (4).

studies have highlighted the changing role of the apex court, there is very little work on the role of the judiciary of the constituent states. The various entries in *Combat Law* (2008) discussing the changing nature of judiciary at central and state level, do not have any discussions on West Bengal. In a condition of rapidly changing jurisprudence of an erstwhile pro-labour judiciary where does an apparently pro-labour state like West Bengal feature'? Recent studies²⁷ have further problematized the pro-labour orientation of the state in industrial relations. In spite of the protective legislations, the state in West Bengal conforms to the overall trend of state withdrawal witnessed across India. The withdrawal of the state does not take place through aggressive neo-liberal policies; rather it is reforms by stealth—through non-implementation and slackening of enforcement that the state in West Bengal withdraws from an interventionist role. In this scenario, does the judiciary then become the recourse to maintain the pro-labour orientation that has characterised the state?

This issue becomes even more relevant in the context of declining trade union militancy that has characterised the state since economic liberalisation. Once a hotbed of radical trade unionism, strikes in the state have shown a marked decline. The proportional number of strikes and lockouts are generally assumed a reliable index of measuring trade union militancy. The table below demonstrates that in West Bengal, the post-liberalisation phase has witnessed a steady decline in the numbers of mandays lost due to strikes as opposed to lockouts). Although in terms of total number of disputes the state is marked by a roughly increasing trend, it is lockouts that contribute to most of the disputes.

²⁷ See for eg. Mahmood and Banerjee (n11).

Fig 1. Number of Strikes, Lockouts and Total Disputes in West Bengal, 1980-2011



Source: Authors' calculations based on Labour in West Bengal (various Issues)

The data presents clear evidence of decline in labour militancy. Evident from the data is overwhelming preponderance of lockouts in overall industrial disputes and decline of strikes both in absolute numbers as well as in proportion to total disputes. The data suggests an altered capital-labour relation in the state as strike and lockout are considered proxy for strength of trade unions and employers respectively reflecting their relative ability to extract economic costs²⁸. Scholars like Banerjee²⁹ and Sen³⁰ have also argued that since mid-1980 the entire increase in the number of disputes in the state can be accounted through the increase in lockouts. In such a scenario of declining labour strength, there has been an increasing tendency for trade unions to take recourse to legal remedies in many advanced countries.

Methodology

In order to interrogate the nature of judicial intervention in industrial relations of West Bengal this paper looks at disputes that came up before the Calcutta High Court. The data for

²⁸ Datt, Ruddar (2003) *Lockouts in India*. Manohar: New Delhi.

²⁹ Banerjee, Debdas. 1998. "Indian Industrial Growth and Corporate Sector Behaviour in West Bengal, 1947-97." *Economic and Political Weekly* 33 (47/48).

³⁰ Sen, Ratna, 2009. *The evolution of industrial relations in West Bengal, ILO Asia-Pacific working paper series*. New Delhi: International Labour Office, Subregional Office for South Asia.

the paper is collected through an in-depth study of judgments in cases lodged under the IDA during the post reforms period i.e. between 1996 to 2014³¹. Case selection was based on certain criteria in order to keep it manageable and meaningful. We only considered disputes raised under IDA and no other legislative provision as our objective is to comment on industrial relations through judicial interventions. Only cases where trade union is one of the parties was considered so as to preclude individual cases of disputes. In order to capture the inter-industry differences we selected cases across urban manufacturing industries, selecting top five industries constituting more than 80 percent of net value added and employment in the state. The industries selected for analysis according to relative share of value added and employment were Jute, Engineering, Chemical, Leather, Mineral and Mining.

In total we find 79 cases that fit our criteria. The cases were selected from a search of all IDA cases in Calcutta High Court from the website indiakanoon.org and Westlaw India. They are online legal resources that provide an integrated reading of legal clause and court judgments. These are considered authentic repositories of court judgments and crosschecking one data source with other further verified their reliability.

The macro analysis of judicial intervention is supplemented by an in-depth reading of the selected cases. The cases selected for in-depth discussion are typical to each category chosen to demonstrate points that were representative of most cases under that category. Using the High Courts as the main reference point, we looked at the entire trajectory of the cases. We traced the case judgments backward to the labour tribunals³², which was first site

³¹ As our initial point of intervention was the Calcutta High Court, which is an appeals court a time gap from liberalisation in 1991 was considered essential. Labour lawyers and practitioners broadly agreed that a minimum of 5 years on average is the time taken for a case to be disposed at the lower courts and be appealed in the High Court.

³² We have used the term labour tribunals to denote both the Labour Court and Industrial Tribunal in the rest of the paper.

of judicial intervention as well as to the Supreme Court (the highest court of appeal). This enabled us to compile the entire trajectory of the cases by following the Supreme Court judgment in cases where the aggrieved parties appealed against the High Court verdict. As cases in the High Court are usually appeals against the judgment of labour tribunals, we also traced back the origin of industrial disputes and the judgment of these lower courts. Thus we traced instances of industrial dispute cases through the different levels of judiciary, analyzing judgments of the different levels of courts, responses of the aggrieved parties to such judgment and overall trajectory of the dynamics between judiciary and industrial relations. In addition, informal interviews with lawyers and labour rights activist informed the process of data collection.

Our analysis of judicial intervention in industrial relations was informed by broad questions driving the research. First what can we derive about the nature of industrial relations from the study of adjudication? What are the trends in adjudication and core issues of dispute in the court cases? Does the declining trade union militancy correspond to an increase in judicial recourse to dispute resolution?

Secondly what is the attitude of the judiciary? We analyse the verdict of the courts, evaluate the position of the judiciary based on the judgment and map on the discretionary components where judicial intervention lead to constructive resolution of the dispute. What can we deduce about the judicial orientation on industrial relations question based on stages of evolution of argument?

Finally is judicial behaviour uniform across levels of judiciary or does the interpretation by the different levels of the judiciary (lower to higher) lead to dissimilar verdicts?

Judicial intervention and industrial relations in West Bengal

A summary of all the ID Act cases filed in Calcutta High Court during 1996 and 2014 reveals that 800 cases had been filed under various provisions. Of the 800 cases, a little less than 10% cases (79) cover disputes between employer and employee (represented by trade unions) in urban manufacturing sector. Of the rest, a significant number of cases concerned employer-employer relation over issues of partnerships, mergers, division of financial liability and other responsibilities. The next highest number of cases were employer-employee cases in the service sector industries, electricity board (CESC), newspapers. The cases filed by individual workers for their termination of service formed the next lot of cases. Finally a very small number of cases were in the employee-employee domain dealing with competing claims to job, benefits etc.

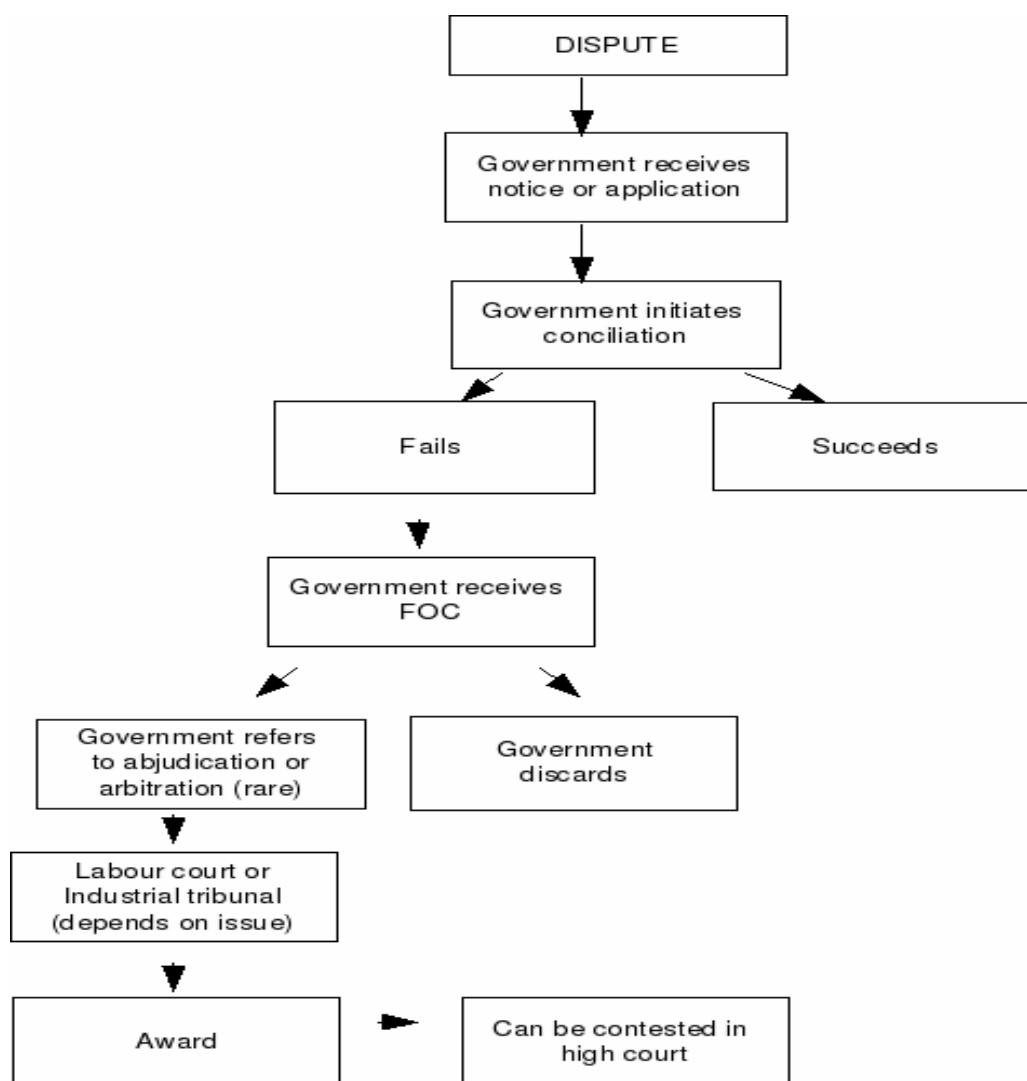
Legal framework

Before discussing the cases under study it will be useful to have an overview of the legal framework. Under Section 2(k) of IDA, industrial disputes refer to any dispute or difference between employers and employers, or employers and workers, or workers and workers which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person (IDA, 1947). Dispute must be related to wage, work condition, union recognition or other employment related issues and must be raised by a substantial number of workers. Except for termination, individual disputes are not considered industrial dispute.

The IDA provides different methods of dispute resolution. The modes of resolution through state intervention consist of establishment of bilateral committee (Grievance Redressal), compulsory conciliation and mediation and finally arbitration and adjudication. Non-state intervention involves collective bargaining through bipartite and non-state tripartite

meetings or voluntary arbitration ³³ . As such adjudication (except in case of termination) represents the final stage of dispute resolution. The IDA prescribes a procedure through which a dispute reaches the court for adjudication, as demonstrated in the diagram below.

Fig 2. Trajectory of dispute resolution under ID Act 1947 ³⁴.



Section 1 of IDA provides that if dispute is resolved through negotiation and bargaining within the two parties, then it is a bi-partite settlement ³⁵ . If however, a settlement

³³ Saini (n16).

³⁴ Fagernas, S. (2010). "Labour Law, Judicial Efficiency and Informal Employment in India", *Journal of Empirical Legal Studies* Vol. 7(2): P310.

³⁵ Industrial Disputes Act (1947). http://pblabour.gov.in/pdf/acts_rules/inustrial_disputes_act_1947.pdf. Accessed on 10.07.14.

is not reached at the bipartite stage, either of the parties could write to the Conciliation Officer thus leading to a tri-partite discussion. Under subsection 3 of the Act, if a settlement arises out of such a meeting which has been signed by the Conciliation Officer, then such terms of settlement are binding on all the workers, even those not present in the meeting³⁶. Under section 12 (4), if no settlement can be arrived at, the Conciliation Officer sends a Failure Report. Under 12 (5) the government may/may not make a reference. Section 10 holds that the government may not make a reference on the ground of this being a vexatious demand but it has no power to adjudicate on the dispute itself³⁷. In case of non-reference, the government has to provide reasons for its decision which are amenable to judicial review under article 226 of the constitution ³⁸. If the government makes a reference, then the dispute is heard in the Labour Court or the Tribunal as the case may be. The issues of rights such as dismissals are heard in the Labour Court and those of interest such as wages and allowances are heard in the Tribunal ³⁹. Under article 226 of the Indian Constitution, the contesting parties could pray for a writ petition in the High Court against their decision. If one of the parties disagrees with the decision of the Single Judge of the High Court, they can then make an intra-court appeal to the Division Bench of the High Court. The final court of appeal is the Supreme Court.

Decline in disputes?

Intuitively one can argue that nature of judicial intervention not only depends on the stance of the judiciary but also on the total efficiency of the system and attitude of labour, capital and the state. Hence to allow the shift of collective bargaining from the domain of trade union

³⁶ Ibid.

³⁷ Fagernas n(35).

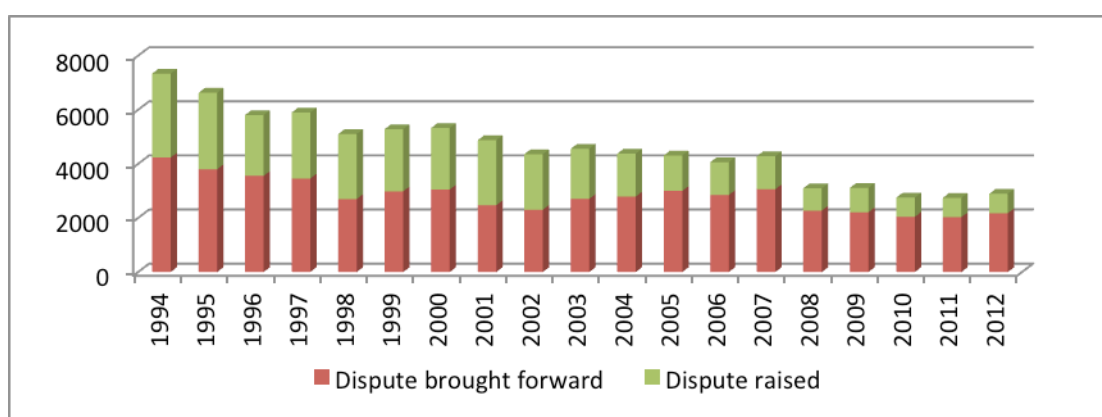
³⁸ Ibid

³⁹ Saini n(16) 33

militancy to the institutionalised setting of the courts, judicial efficiency is also of importance.

A look into the trends of industrial disputes in West Bengal is useful to place our specific data in context. Recorded disputes during 1991-2012 show a secular decline in any particular year as well as disputes brought forward from previous years (disputes that were raised in previous years and remained unresolved).

Fig 3. Disaggregate data on Total Dispute Raised and Brought Forward from previous years⁴⁰



Source: Authors' calculation based on Labour in West Bengal (various issues)

Evident from the graph is the remarkable decline in total number of industrial disputes from an average of 6009 disputes (3455 disputes brought forward, 2555 disputes raised) during 1994-1999 to an average of 3341 disputes during 2006-2011 (2410 disputes brought forward and 932 disputes raised). Interestingly, dispute resolution data over the period also reveals a decline along with total disputes in the state. In 1991, 3379 disputes were disposed out of 8365 disputes raised (40 percent), which in 2011 was 620 out of 2743 disputes (22 percent).

⁴⁰ The figure shows the absolute number of disputes raised by individual workers, trade unions and employers before the labour bureaucracy as per various labour acts. Disputes raised signify the numbers of disputes noted first time in a particular year. Disputes brought forward signify disputes recorded previous years that remained unresolved.

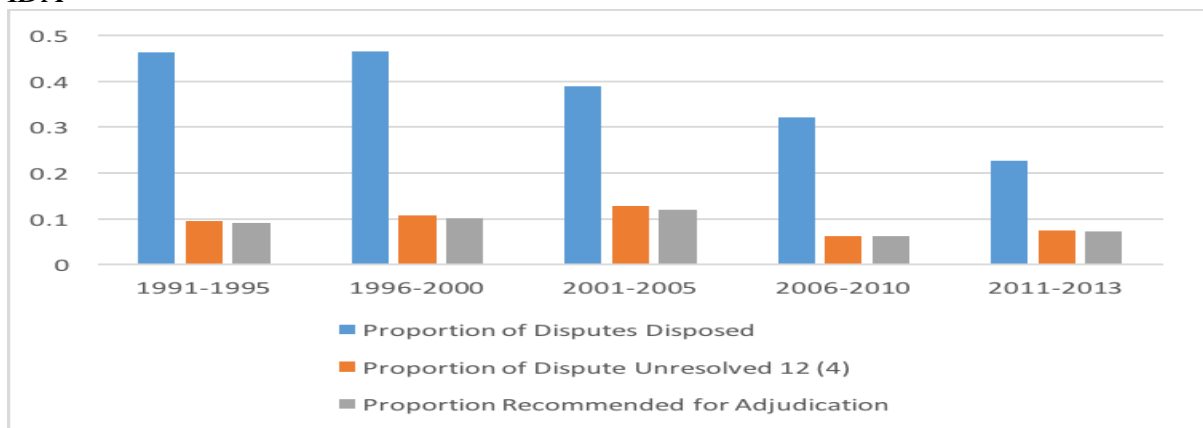
Figure 4 below illustrates the total number of disputes raised, disposed⁴¹ and unresolved under the IDA. As the data reveals, proportion of disputes settled has declined over the years along with the proportion of unresolved disputes. While the proportion dispute disposed had always been low, it declined from around 40 percent of total disputes in early 1990's to around 20 percent around 2010's. The disputes recommended for adjudication by the state government forms a proportion of the disputes unresolved i.e. those disputes that could not be settled through the aforementioned methods and resulted into 12(4), the failure report.

Interestingly this decline in dispute is corresponded with similar decline in the number of disputes recommended for adjudication by the state government. As Figure 4, below illustrates the number of disputes recommended for adjudication by the state government shows a sharp decline from 391 in 1991 to 59 in 2012. Therefore legal recourse declined from around 10 percent in the 1990s to around 6 percent in the latter half of 2000s. Evidently, less and less disputes are being settled through recourse to judicial intervention. This secular decline in resolution of dispute through adjudication is contradictory to theoretical assumption that with the declining strength of trade union, adjudication will take over as a predominant mode of conflict resolution⁴².

⁴¹ The data on disputes disposed signifies the formal methods of resolution like negotiation, conciliation, adjudication. The data reveals that dispute resolution through these methods have been decreasing over the years. Instead the category 'otherwise disposed off' of resolution has gained ground and constitutes as the most dominant mechanism of dispute resolution. The otherwise disposed off as a category of resolution does not reveal anything except that, it is resolution outside the state (mediation, negotiation and conciliation). It largely consists of resolution through non persual, lapse over time, settlement through non state actors without formal recognition.

⁴² See for example Bardhan, P. (1992). "A Political Economic Perspective in Development", in J. Bimal (ed.) *The Indian Economy: Problems and Prospects*, New Delhi: Viking; Sodhi, J.S. and David H. Plowman (2002), "The Study of Industrial Relations: A Changing Field", *Indian Journal of Industrial Relations* 37(4); Cohen (n16); Papola, T.S., G.S. Mehta and V. Abraham (2008). *Labour Regulation in Indian Industry: A Review of Studies and Documents*, New Delhi: Bookwell.

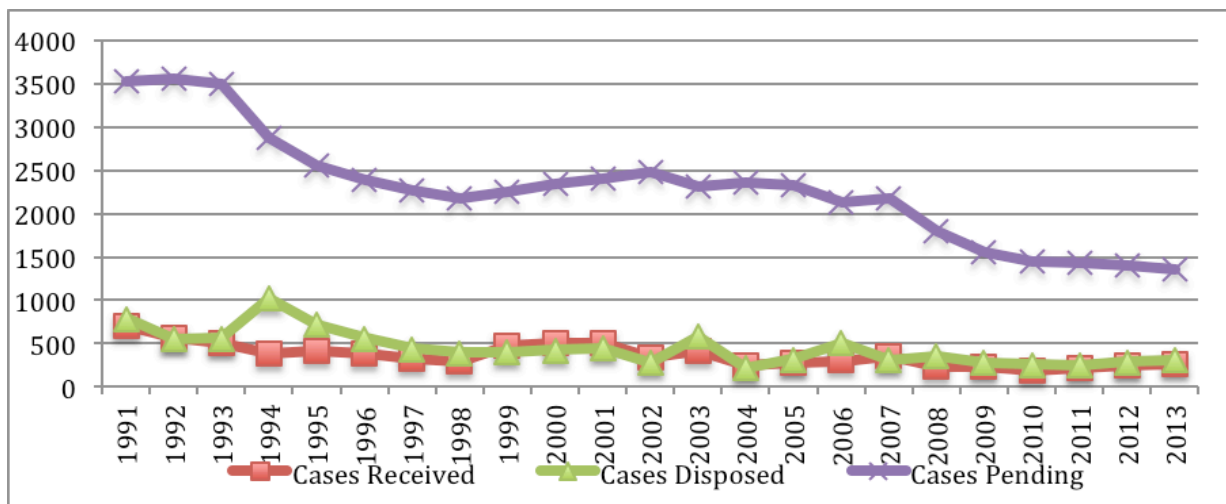
Fig 4. Proportion of disputes disposed, unresolved and recommended for adjudication under IDA



Authors' calculation based on Labour in West Bengal (Various Issues)

In order to investigate the possible reasons behind this we now focus on the data on adjudication under the IDA in West Bengal.

Fig 5. Cases launched, disposed and pending under ID Act 1947 in West Bengal

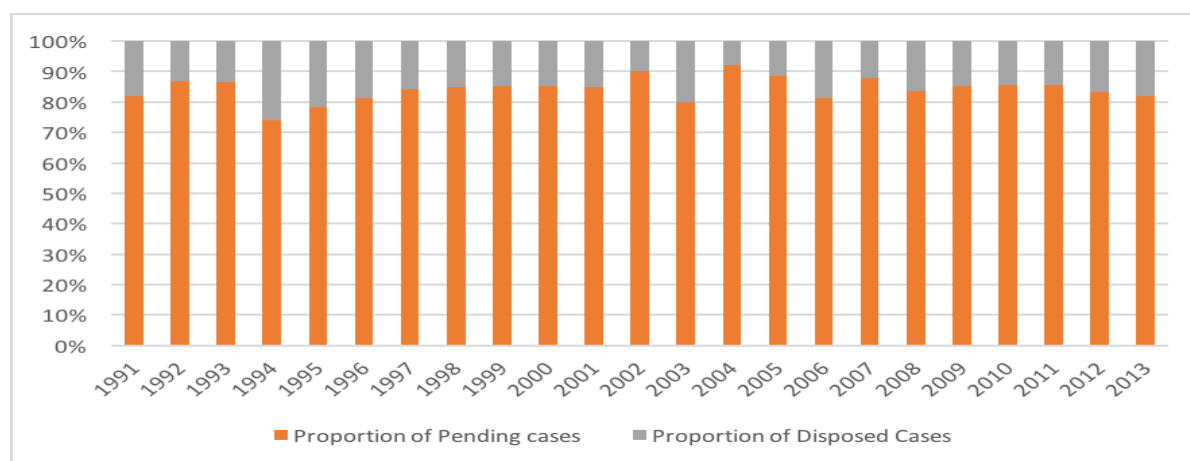


Source: Labour in West Bengal (Various Issues)

The decline in absolute number of pending ID Act cases, as seen in Figure 5, cannot be attributed to increased judicial efficiency. Instead, it appears that the declining number of new cases recommended for adjudication is responsible for the overall decline in pending

cases i.e. since lesser cases are being launched, the number of cases carried over to the next year is also decreasing. As the proportion of cases disposed and cases pending under ID Act reveals, the rate of disposal and pending cases has remained relatively stable over the years.

Fig 6. Proportion of ID Act cases disposed and pending in labour tribunals



Source: Labour in West Bengal (various issues)

Clearly the rate of disposal of cases has hovered around 20 percent of total disputes while the proportion of pending disputes has been around 80 percent over the years, Such a finding corroborates the sticky nature of industrial dispute and the slow pace of judicial dispute resolution. The data on court cases (disposed and pending) suggests that judicial intervention in dispute essentially prolongs the dispute. Interestingly the data also illustrates that declining trade union militancy in West Bengal does not correspond to an increase in judicial recourse to dispute resolution.

To interrogate further we look into the specific causes of dispute that necessitates judicial intervention.

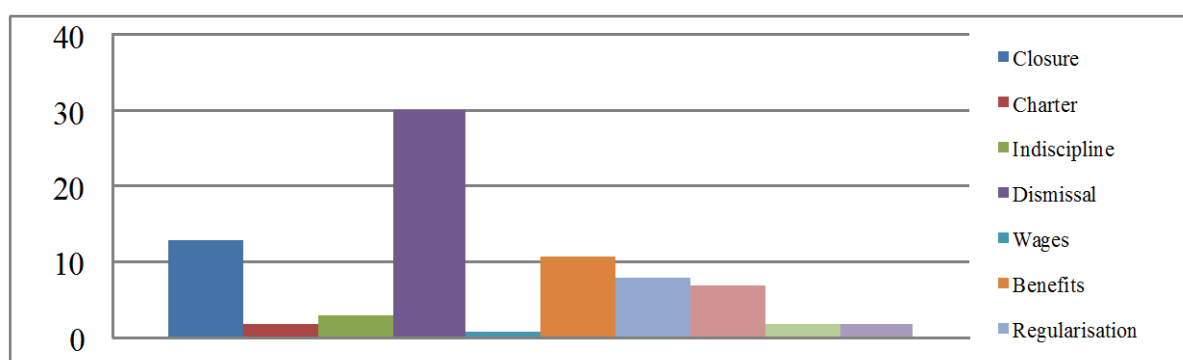
Cause wise distribution

Court cases are a subset of industrial disputes that enter the domain of the judiciary. The detailed evaluation of 79 court cases reveals some trends in industrial relations and disputes

that reach the judiciary for resolution. Disaggregated analysis of causes of irreconcilable disputes suggests that judicial recourse is adopted, not for collective bargaining or rights, but as the last recourse to the workers when the question of sustaining the very relation arises.

Evident from Figure 7 below is the preponderance of termination of service as a cause of legal intervention in industrial relations accounting for 30 (38 percent) of the total cases we studied. Closure comes second constituting 13 (17 percent) of the disputes raised in the High Court. Of these cases, only 7 cases saw appeal in the Supreme Court of which 3 were of termination and 2 of terms of service and one each on representation and wage disputes.

Fig 7. Cause wise distribution of select cases under ID Act 1947 filed in Calcutta High Court 1996-2014



Source: Authors' calculation based on reading of cases from www.indiakanon.org and Westlaw India

Contrasting the cause-wise distribution within this subset of court cases with the cause-wise break up of industrial disputes in the overall state (West Bengal) illustrates a broad correspondence even if the categories do not match exactly.

Table1. Major cause-wise distribution of failure of conciliation in West Bengal

Year	Wages	Bonus	Personnel	Retrenchment	Leave- Workhour	Indiscipline	Others	Not Classified
1995	0.105	0.029	0.116	0.078	0.007	0.009	0.258	0.356
1997	0.164	0.048	0.171	0.131	0.022	0.002	0.257	0.121
1999	0.093	0.046	0.200	0.097	0.001	0.004	0.356	0.191
2000	0.105	0.029	0.177	0.078	0.005	0.001	0.354	0.229
2002	0.076	0.037	0.215	0.106	0.001	0.000	0.211	0.331
2006	0.081	0.042	0.138	0.086	0.003	0.003	0.178	0.460
2010	0.051	0.025	0.119	0.014	0.011	0.004	0.242	0.527
2011	0.102	0.010	0.126	0.044	0.010	0.000	0.068	0.626

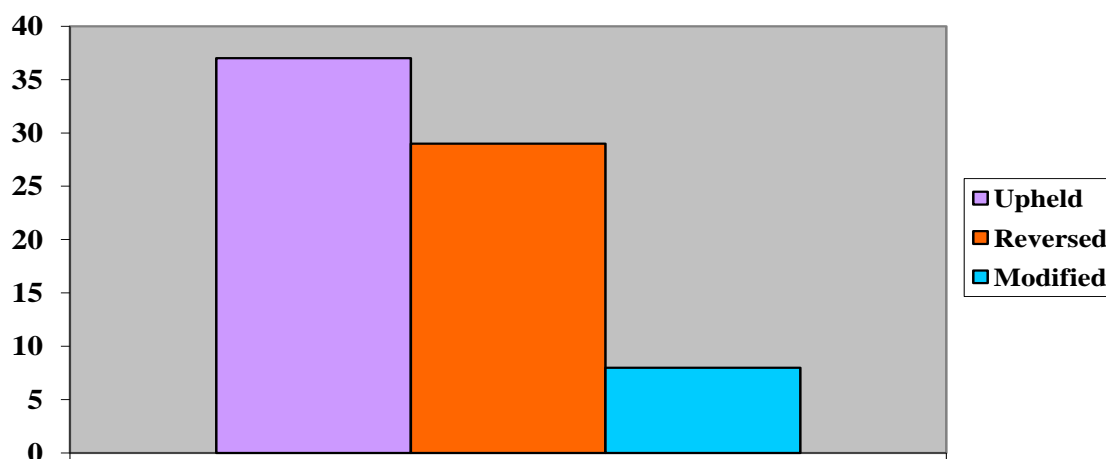
Source: Compiled from data in Labour in West Bengal

A reading of fig. 7 and tab. 1 illustrates that issues of wages or terms of service constitute a very small proportion of the High Court cases as it does for disputes in West Bengal in general. While personnel and termination of service accounts for the majority of failed conciliation; the majority of the court cases also corroborates closely with these. Closure, remains a significant issue in court cases which is not corresponded in overall disputes. Interestingly closure, termination and personnel issues are not considered central to classical labour-capital relation. Rather these crop up when the very industrial relation is at stake. This seems to suggest that the court is not commonly the domain where class questions are raised, rather it serves as the last recourse to the workers when the question of sustaining the very relation arises.

Judgements

A natural extension of the study of number of cases is the evaluation of judicial verdicts. Since the analytical point of departure is the High Court judgment we trace the judgements in favour or against by the aggrieved party going for appeal. Although this is not ideal, given the lack of access to all the legal cases, it is the most intuitive assessment of judicial verdicts. Of the 79 cases studied, 74 were referred to the court as appeals against labour tribunal's decision. Of the total cases, it has upheld the decision of the labour tribunal on 37 cases while reversing 29 cases. It has also modified the rulings in 8 of the cases.

Figure 8: High court judgment vis-à-vis Tribunal decisions



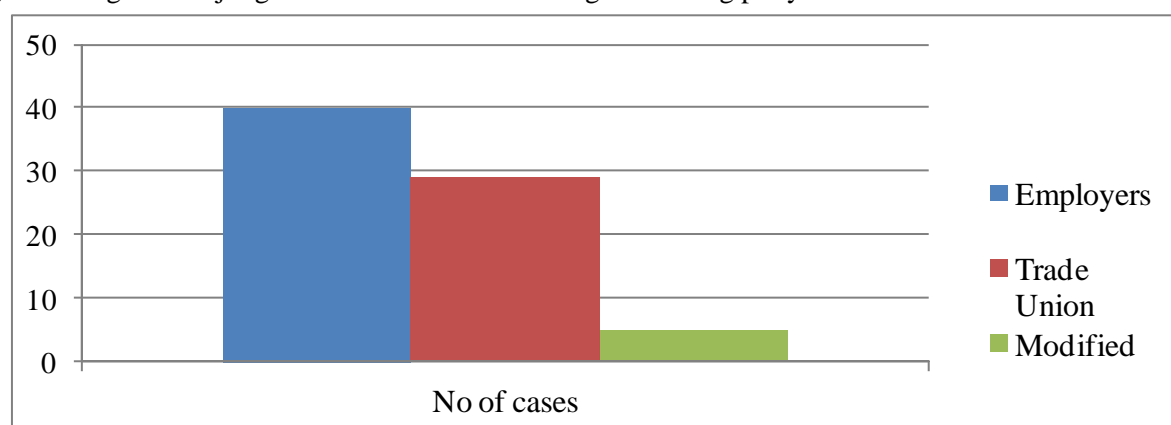
Source: Authors' calculation based on reading of cases from www.indiakanoon.org and Westlaw India

To put it in perspective, 94 percent of these cases were appeals/challenge against the verdicts of industrial tribunal/ labour court. Only 6 percent of the cases were directly filed in the High Court. Of the 74 cases of appeal, the High Court reversed the judgement in 50 percent of the cases while upholding 39 percent of the verdicts of the labour tribunals. This is remarkable as reading of legal provisions and dispute seems to diverge significantly in the two layers of the judiciary. Again the 7 cases that went on to the Supreme Court, the High

Court's verdict was upheld in only two cases and reversed in the other five instances. Thus, the rate of reversal is high between different levels, on the issue of industrial disputes. Of course, given the small number of cases we study any definitive assessment is difficult. This divergence, in legal interpretation, however, requires further attention and careful evaluation.

To interrogate the issue we further broke up the data to see how many of the verdicts go in favour of the employer and the trade unions respectively in case of both the High Court and the Supreme Court. The trends in the way the judgements have spanned out in the High Court (Figure 9) illustrate how litigation, in the higher judiciary is the domain of the employer.

Figure 9: High Court judgments breakdown according to winning party

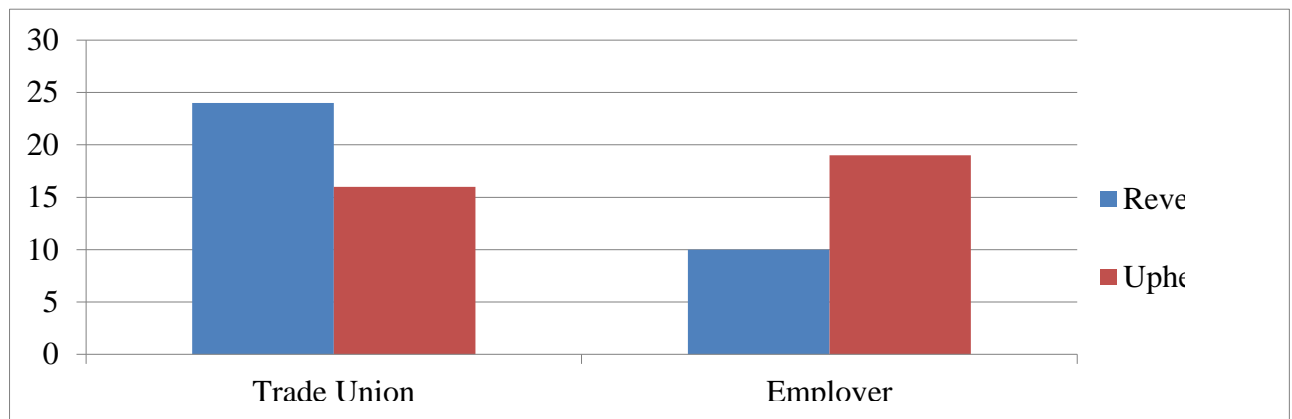


In the High Court the number of cases in favour of the employers account for 40 (54.05 percent) in comparison to those in favour of the trade unions 29 (39.18 percent). In case of the Supreme Court, there was no such clear trend. While three of the cases went in favour of the trade unions and the workers, four went in favour of the employers. Given the small number of cases, this cannot be held as indicative of any particular trend.

We disaggregated the High Court verdicts further to see what kind of decisions are upheld and what reversed by it. Even a cursory glance at the figure below shows the clear advantage enjoyed by the employers in the High Court. Of the 40 cases in which the labour tribunal

decision favoured the Trade Union, the High Court reversed the decision in 24 (60 percent) cases. In the 29 cases which were in favour of the employer, the High Court upheld it in over 19 (65 percent) of the cases and reversed it only in 10 (a little over 34 percent) cases.

Figure 10: Appellant-wise division of High Court judgments



Caraway⁴³ (nd:20) argues that the workers face a greater challenge than the employers in establishing their case in the courts as the employers have resources to access experienced lawyers to present their case. The trend of adjudication from the Calcutta High Court seems to corroborate this hypothesis. In the case of West Bengal, it can be seen that the decline in trade union movements has not been accompanied by corresponding increase in pro-labour adjudication especially at the High Court. In contrast, the labour tribunals tended to be more pro-labour. Of the 75 cases heard in High Court that came as appeal against the decision of the labour tribunal's judgment, 48 verdicts were in favour of the workers and 27 in favour of the employers. This illustrates a clear pro-labour trend in the labour tribunal's judgment.

This tendency of labour judiciary to favour workers and High Court of favouring employers challenges the conventional wisdom of connection between the employer and the

⁴³ Caraway, T.L. Final Report: Labour Courts in Indonesia.

state. Saini⁴⁴ in his study illustrates that the connection between the management and the state is stronger than the perceived strong connection between state and trade unions affiliated to the ruling party. Our analysis, however, suggests that labour tribunals (part of state executive as labour bureaucracy) are more pro-labour than the High Courts given the political dominance of left parties in the state during the period. Added to this are the institutional bottlenecks through time-consuming nature of adjudication and costs involved that ensured that employers have advantage at the level of High Court.

While these broad trends give a sense of the nature of judicial intervention in the case of the Calcutta High Court, an in-depth study of some of the cases can provide us with a rich insight into the nuances of industrial disputes.

Section II

Nature of judicial intervention: Case study of individual judgments

To push our understanding of judicial intervention in IR we look at specific instances of judicial interpretation of laws. We look at two categories of cases—dismissal and closure as these constitutes the bulk of the cases. Together they account for 43 of the 79 cases, which is 54.43 percent of the total cases. Through an exploration of some of the typical cases in these categories, we problematize a few common notions of industrial dispute and illustrate how these become contested terrains through judicial action.

Termination of Service: Dismissal

Termination of service forms a special category of cases in which the workers can directly appeal to the labour tribunals or the High Court in individual capacity. The IDA terms retrenchment as termination of the service of workers for any reason other than by way of

⁴⁴ Saini (n16)

disciplinary procedures. Dismissal, on the other hand, is stigmatic in nature and comes out of misconduct such as theft, indiscipline etc. Both the cases looked at here are cases of dismissal as that is the most common mode of termination of service we came across.

The case of Tirupati Jute Industries Pvt Ltd. Vs the State of West Bengal⁴⁵ provides a trajectory of cases of dismissal and some insights into the nature of judicial intervention in the different courts. Four of the jute-mill workers had been dismissed from service because of indiscipline. After holding an enquiry, the Enquiry Officer dismissed these workers from service following which the dismissed workers raised a dispute. The government referred this dispute to the Labour Court. The Labour Court held that the workers were not given due opportunity to contest the enquiry and directed their reinstatement with full back wages.

The management challenged this verdict. The union also raised a contention regarding the legality of the order, as it was not approved by the manager of the establishment or employer as required by Standing Order 14(e)⁴⁶. The case was heard by a Single Judge of the High Court. He noted that the Labour Court had erred by holding that the workers did not get an opportunity to defend themselves in a domestic enquiry. The judgment also upheld the contention raised by the trade unions, as there was no approval to the dismissal as required under Standing Order 14(e). The Court thus curiously overturned the claims of both the appellant and defendant. It directed that the workers be reinstated with full back wages. Here we can see that while the Court itself observed that the workers might have been guilty of

⁴⁵ 2009 LLR 568.

⁴⁶ "No order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances alleged against him. The approval of the Manager of the establishment and, where there is no manager, of the employer, is required in every case of dismissal, and when circumstances appear to warrant it, the manager or the employer may, whether an appeal has or has not been preferred, institute independent inquiries before dealing with the charges against a workman."

misconduct as they had been accused and had failed to defend themselves at the right opportunity, it still revoked the dismissal order and upheld the Labour Court order to reinstate the workers with compensations. The judgement was then challenged in the Division Bench of the High Court. The Division Bench also confirmed the judgment of the Single Judge and upheld it. The Division Bench held that over a decade has passed since the case was originally heard and two of the four workers had already reached the age of superannuation and two were about to reach the age.

The employers further appealed against this order in the Supreme Court. The Supreme Court concerned itself with the validity of the Standing Order 14(e). It noted that the question of the Standing Order was raised by the workers for the first time in the High Court and not before the Labour Court. It held that if the High Court felt that the matter did not need to be remitted to the Labour Court they should have given an opportunity to the appellant i.e. the employer to produce before it the relevant materials to prove that it had complied with Standing Order 14(e). By failing to do so both the decision of the Single Bench and Division Bench of the High Court were not based on evidence and needed to be set aside. While this would normally entail referring the case back to the Labour Court, in this case the Supreme Court exercised its jurisdiction under Article 142 to mete out justice. Since the dismissal order was passed in the years 1990-91 and the said employees had by now reached the age of superannuation, there was no question of them being reinstated even if they won their case in the Labour Court. The Supreme Court set aside all the preceding orders and ruled that one-third of the back wages between the period of dismissal and superannuation should be paid to the workers as full and final settlement. This, however, does not contradict the order dismissing the four workers from service.

The recital of this case brings forth certain interesting points. The arguments of this particular case in all the tiers of the judiciary seem to focus on the technicalities of the dismissal order. While the Labour Court tried to play an interventionist role, the High Court was concerned with the procedural aspects of the case. In spite of finding the dismissal to be justified, both the benches of the High Court revoked the Tribunal's order on grounds of technicalities of Standing Order 14(e). The Supreme Court, on the other hand, played an interventionist role by not only revoking the High Court order but also setting out a judgment that takes into account the time lag between the original incident and the resultant dismissal and the present condition.

Finally, the trajectory of this case also illustrates the time it takes for a judgment to travel from its original incidence to final shape. While the incident of dismissal took place in 1990-91, by the time the order was heard in the Supreme Court it was already 2009. Therefore the original dismissal order had no relevance at the present time as the afflicted workers had already reached retirement age and the question of their reinstatement was superfluous. This is typical to the experience of the dismissed workers who usually has to spend their entire lifetime in fighting out the legal battles as the employer keeps challenging verdict from one court to the other.

The second case was dismissal of an employee on the suspicion of theft. The writ petition was lodged by Reliance Jute Mills against the order of the Industrial Tribunal⁴⁷. In this case, there was no appeal to the Supreme Court. A worker was dismissed from service for an alleged theft of a tin with three gunny bags. Following the dismissal, a dispute was raised and the matter referred to the Industrial Tribunal. The Tribunal declared that the enquiry held against the worker was proper, valid, and no natural justice had been avoided or violated.

⁴⁷ 2001) III LJ 228 Cal

Following this, the worker petitioned under Section 11A of IDA for a lenient view to be taken of the punishment imposed on him by the employers. The Tribunal took a sympathetic view of the action and directed the company to reinstate the concerned worker and pay him 25% of his back wages from the date of dismissal till the date of reinstatement as the punishment was not proportionate to the offence. The employers filed a writ petition against the Tribunal order in the High Court. The High Court held that the Tribunal had arbitrarily, injudiciously interfered with the order of dismissal passed by the employer in exercise of power under Section 11-A of the said Act. Therefore, it overturned the Tribunal's verdict and held the dismissal to be valid.

In the two contrasting verdicts given by the two courts two issues come to the fore—the questions of trust/ discipline and procedure. The commission of the theft was not the matter of debate; rather the contention was the censuring action of the management. The Tribunal's verdict was based on an appeal to the employer to go beyond the materialistic relations of employment. While his theft had been proved, the punishment given by the company for goods whose value will be no greater than Rs. 100 was too harsh. It talked about the need for commensurability of the punishment with the crime. Holding the material circumstances of the worker to be somewhat liable for such misdemeanour, the Tribunal's verdict went beyond the letter of the law.

In contrast, the judgment of the High Court went strictly by the letter of the law. This particular act of dismissal was a disciplining act not just for that particular worker but also as an illustration for the others. The judgment also subscribed to such an understanding of the case interpreting it strictly through its legal provisions. The nature of judicial intervention here was thus formalistic basing itself on the procedural aspect of the law rather than as a facilitator of industrial harmony. While the lower courts verdict appealed to the paternalistic

side of the employer asking them to take a lenient view in consideration of the meagre value of the articles stolen and the economic conditions of the said worker, the judgment of the higher court took an instrumentalist view of the same. Interestingly such a formalist approach of the higher judiciary has been noted by others observers of judiciary (e.g. Sinha, 2008: 45-46).

Closure

Closure refers to the permanent shutting down of a place of business for any reason. Closure is necessarily associated with the loss of employment. Of the cases of closure, that we looked into none reached the Supreme Court. The two cases examined here are longitudinal cases involving a debate between shifting and closure.

The dispute related to proposed shifting of Soorah Jute Mill from Narkaldanga to Birlapur in order to ensure economic viability through a merger. Birla Corporation was asked to get consent of the workers' union for the proposed shifting of its mill. The three trade unions opposed the shifting. A stalemate in the production activities ensued. Consequently, the management declared lockout in the mill. The additional Labour Commissioner tried to resolve the dispute but failed. On his report to that effect, the State Government made a reference under section 10 of the Act to decide if the proposed shifting was justified. The employer's representative challenged the very validity of the order and the locus standii of the state government to make this reference, in the High Court in front of the Single Judge. The High Court held that order of reference by the state government cannot be maintained and quashed the prohibition order against the lockout.

The Court contended since the issue was not connected with employment or non-employment or the terms of employment or with the conditions of labour of any person, such

a dispute cannot constitute an industrial dispute as defined under Section 2(k) of the said Act. The company has clearly stated that this shifting will not involve any break in service and the workers will continue to enjoy the facilities that they have so far been able to access. As their terms of employment will remain unchanged and unaffected, the shifting cannot amount to an industrial dispute within the meaning of Section 2(k) of the IDA. Therefore, the order of reference cannot be maintained. The prohibition order against the lockout was also illegal, as this order was connected to the reference made by the state government in a case where there is no existence of industrial dispute. In giving this verdict, the Court did not give heed to the trade union's contention that industrial disputes were not only the matters in the Second and Third Schedules but had a wider import. It did not recognise as legitimate the apprehension of the trade unions that shifting to the new site might mean less work for the present workers, which will have implications for their wages.

The Court held, "*An employer who has taken a high risk by making huge investment in the business, has unfettered right to select the place of business according to his own choice. The employees cannot stand in the way of such decision making process of the employer, so long as their conditions of service are not affected by such shifting*"⁴⁸. The shifting of an industry from one place to another in the interest of trade is completely the prerogative of the management of the company, which has the right to reorganise its work any way it pleases. The verdict, in essence, prioritised the employer's right to run his business and implicitly negated the employees' rights to even interfere in matters of the company that did not relate to their prescribed terms of employment.

The rejection of this writ petition by the High Court was challenged in the Division Bench by the Birla Corporation Ltd Sramik Union, Bengal Chatkal Mazdoor Union and State of

⁴⁸ 2006 (2) CHN 13, (2006) IILLJ 84 Cal. 10th February 2006.

West Bengal. The petitioners' argument was based on apprehended crisis that might result from the shifting. They reiterated their demand that the Industrial Tribunal should be allowed to examine the questions and their ramifications. The union's demand of having the dispute heard at the Industrial Tribunal might arise from their faith in the Tribunal's understanding of the implications that relocation might have on the workers and indicative of its pro-labour leanings. The Division Bench upheld the decision of the Single judge and held that none of the arguments advanced by the writ petitioners establish that the management's decision in relation to shifting constitutes an industrial dispute.

The case dealt with the question of jurisdiction of the state and not with the proposed shifting per se. While the IDA holds that the state government can refer a real or apprehended dispute for adjudication, the terms through which the High Court decided what constituted industrial dispute were tightly framed. In this case, while there was no immediate crisis to the employment conditions of the workers, there seemed to be a sense of apprehension regarding the negative consequences that such shifting will have on their continued employment. In the final verdict, however, this apprehension was not accorded any recognition. Raychadhuri⁴⁹ argues relocation is often akin to indirect layoff to the workers causing a sense of insecurity. While relocation might not affect terms of employment in its narrow sense, there are other implications from it such as distance to work, availability of work. By viewing relocation within its immediate context, the Court took a narrow legalistic view of the issue here.

The recognition accorded to absolute right that the employers seem to enjoy to conduct their business or not conduct it vis-a-vis the workers points to a fundamental question—the

⁴⁹ Roychowdhuri, S. (2008). "Class in Industrial Disputes: Case Studies from Bangalore", *Economic and Political Weekly* XLIII (22), 33-34.

very idea of an industrial dispute. The judgements challenged the classification of this issue as industrial dispute. While the IDA classifies anything that affects terms of employment between employer and employee as dispute, the court's verdict claimed that relocation does not affect such terms of employment and hence cannot be conceived as dispute. In its judgment, the Court narrowed the conception of disputes considerably.

Conclusion: understanding judicial intervention in West Bengal

The preceding analysis of judicial intervention in industrial relations of West Bengal presents us with an interesting and complex reality. The nature of disputes dealt by the courts, indicate how judicial intervention is usually the last recourse in an industrial relation. Greater incidence of disputes regarding termination of service or personnel both at the macro level in West Bengal and also in our sample, suggests that adjudication is primarily located at the point of an imminent breakdown of industrial relations. Cases of wages and charter of demand, held to be core issues of collective bargaining, form a very small number of the total cases.

The trend of judicial recourse by trade unions to protect established rights and privileges also does not corroborate the global trends. The declining trade union militancy in West Bengal did not show a simultaneous increase in judicial recourse to dispute resolution. The scenario therefore seems to be starkly different from that of advanced capitalist countries such as Canada. While the aggressive onslaught of neoliberalism means the weakening of the labour movements in both the scenarios, the implications for the judiciary seemed to be quite different. The institutional bottlenecks such as long delays in dispute resolution, costs of legal battle serve as an impediment to judicial recourse. Singh⁵⁰ points out how at the all-India

⁵⁰ Singh, G. (2008). "Judiciary Jettisons Working Class". *Combat Law: Human Rights and Law Bimonthly* vol 7(6): 25.

level with the shift in the pro-labour stance of the judiciary the workers became disillusioned and there was a consequent marked fall of litigation.

Interestingly in the case of West Bengal, much like evidence from other parts of India, there did not seem to be a clear relation between the declining strength of trade union and associated rise in pro-labour stance of the judiciary. While the labour tribunals tend to be more pro-labour and interventionist in nature, the High Court is much more pro-employer and concerned with procedural aspects of the law. This results into quite a wide variation in the verdicts given by the judiciaries at different levels. It is difficult to make a conclusive statement about the nature of verdicts in the Supreme Court given the very small numbers of case referred there. Mainly the Supreme Court limits its judgment to seeing whether the verdict arrived at by the High Court is commensurate with the evidence it has and this sticks to the laws within which the dispute is governed.

The behavior of the three levels i.e. labour tribunals, High Court and Supreme Court can be conceptualized through the trajectory of the stages of evolution argument of Nonet and Selznick⁵¹, in terms of reading of the law. We argue that the evolutionary stages proposed by them is not just applicable in case of the law itself, but also in the case of reading of the law whereby the reading of the same law can demonstrate such variations. As Nonet and Selznick⁵² have argued the typologies of law do not always exist in exclusion and within the same legal system there might be a co-existence of repressive, autonomous and responsive laws. In case of West Bengal in the post 1991 phase, we are able to not just discern evidence of these stages in the legal reading of the disputes but also in fact suggest another variation within this typology

⁵¹ Nonet and Selznick (n4).

⁵² Ibid xii

At the level of labour tribunals, adjudication is a function of the state executive and therefore somewhat located in the realms of politics. In a state ruled by a left oriented government, the Tribunal or the Labour Court's jurisprudence therefore tends to be pro-labour. Located closer to the ground, the law and the court here reflect the influence of the dominant left trade unions in their verdicts. We argue that at this stage the nature of judicial understanding of dispute and reading of legal provisions is *organic* as it is located and connected to the realities of the industrial condition. Their judgments are, in many instances, not just procedural but interventionist, concerned with possible implications of various disputed notions.

In contrast, in the High Court, the judicial understanding of the dispute and the legal provisions resembles 'autonomous law', a reading of the law that is insulated from politics⁵³. The High Court represents this formal rational attitude to preserve institutional integrity. The High Court judgment reflects insulated approach to the question of industrial relations. This seems to be in line with the arguments of Mundlak and Harpaz⁵⁴ that judicial preference for the formalistic approach enables the judges to apply an uncomplicated yardstick of compliance with the legal rules which are devoid of value judgments. Nevertheless, this impartiality of the judgment of the autonomous law is limited. As argued by Nonet and Selznick⁵⁵ this law, in fact serves as strategy of legitimation for the dominant in the society. The High Courts with their impersonal formal attitude to industrial relations, time consuming procedures and costs ensured advantage for the employers. The narrative of the cases problematises the very notions on which they are based such as trust, discipline, responsibility, closure/shifting and in fact of what might constitute industrial dispute itself.

⁵³ Ibid, ix-x.

⁵⁴ Mundlak and Harpaz (n15) 772.

⁵⁵ Nonet and Selznick (n4) x.

These debates are, however, not recognised by the High Court in reaching its decision. Rather than engaging with the contested meanings of these central notions and differing perspectives, the Court's verdicts were based on a reading of the explicit letter of the law in question. We have seen the High Court has a greater tendency to reverse decisions which go against the employer and uphold the ones which go against the trade unions. While these are indicative rather than being conclusive, this trend seems to suggest that the higher judiciary i.e. the High Court is not pro-labour. In this sense, therefore we can argue that the impartial autonomous reading of the law, in this context, serves the same functions as repressive law. The data on Supreme Court is insufficient to label its jurisprudence but a detailed reading of the few cases referred to it suggests that by having the scope to look at the macro picture; it has the capability to formulate responsive laws. What is significant here, is that the different levels of the judiciary differs in their stance in the reading of the very same law i.e. Industrial Disputes Act.

In absence of studies on labour tribunals in other states, it is difficult to predict whether the divergence between the labour tribunals and higher judiciary is typical to the case of West Bengal. It can be tentatively suggested that in states where the executive is not directed by stated pro-labour policies, as West Bengal, there might be less divergence between the tribunals and the higher judiciary in their response to industrial relations. However, there needs to be further research in this direction to better examine this claim.

The nature of adjudication by the judiciary in West Bengal, specifically the High Court, much like other regions of India, seems to conform to the trend of increasing abandonment of interventionist, humane approach to questions of industrial relation in favour of narrow legalistic interpretation. In spite of a pro-labour political formation, the highest court in the state does not seem to be pro-labour in its orientation. True to the changing nature of

jurisprudence in India, this stance of the high judiciary in West Bengal presents a strange paradox. The adoption of policies of liberalisation, flexibilisation etc. especially necessitates a greater need of protection of workers. Adoption of policies of liberalisation cannot in itself be a reason for stepping away from the established jurisprudence. The need for protection of workers becomes especially important in such a liberalised economy.

Finally, the verdicts spanning the entire spectrum from lower to higher judiciary are marked by an absence of an articulation of the class question, which is foundational to classical labour-capital conflict. These disputes seem to mark an invisibilisation of class conflict and its replacement with more technical legal issues. Specific issue based conceptualisation of disputes is marked by the prevalence of individual concerns and absence of general class based understanding that marginalises the shared regulation of industrial life and worker's struggles. The study of the broader trends of judicial intervention and the micro-studies illustrate that the relation between the judicial and industrial systems are complex. Judicial interventions seek to reconcile two inherently discordant objectives. On the one hand, it seeks to govern industrial relations in a way that resolves immediate disputes but on the other hand, it often has to go beyond the letter of the law in a way that promotes shared regulation of industrial relations. The role of the judiciary is crucial in this regard as it is through its decision making that law-in-principle is translated into law-in-action.

BIBLIOGRAPHY

- Aghion, Philippe, Robin Burgess, Stephen J. Redding, and Fabrizio Zilibotti. 2008. "The Unequal Effects of Liberalization: Evidence from Dismantling the License Raj in India." *American Economic Review* 98 (4):1397-1412.
- Amable, Bruno. 2016. "The political economy of the neoliberal transformation of French industrial relations " *Industrial and Labor Relations Review* 69 (3):523-550.
- Babu, S. and R. Shetty. (2007). *Social Justice and Labour Jurisprudence: Justice V.R. Krishna Iyer's Contributions*. Sage Publications: New Delhi.
- Badigannavar, V. and J. Kelly. 2012. "Do labour laws protect labour in india? Union experiences of workplace employment regulations in Maharashtra, India." *Industrial Law Journal* 41 (4):439-470.
- Banerjee, Debdas. 1998. "Indian Industrial Growth and Corporate Sector Behaviour in West Bengal, 1947-97." *Economic and Political Weekly* 33 (47/48):3067-3074.
- Bardhan, P. (1992). "A Political Economic Perspective in Development", in J. Bimal (ed.) *The Indian Economy: Problems and Prospects*, New Delhi: Viking.
- Besley, Timothy, and Robin Burgess. 2004. "Can Labor Regulation Hinder Economic Performance? Evidence from India." *Quarterly Journal of Economics* 119 (1):91–134.
- Bhattacharya, B.B and S. Sakthivel (2007). Regional Growth and Disparity in India: Comparison of Pre- and Post- Reform Decades. In: NAYAR, B. R. (ed.) *Globalization and politics in India*. New Delhi ; Oxford: Oxford University Press.
- Burkett, K.M. (1998). "The Politicization of the Ontario Labour Relations Framework in the 1990s", *Canadian Labour and Employment Law Journal* 6:161-184.
- Christian, T.J. (1990-91). "Freedom of Association: Labour Strikes Out Again", *Constitutional Forum* 2: 11-13.

- Cohen, T. (2004). "Understanding Fair Labour Practices-NEWU v CCMA", *South Africa Journal of Human Rights*, 20: 482-492.
- Datt, Rudder (2003) *Lockouts in India*. Manohar: New Delhi.
- Davala, S.. 1992. *Employment and unionisation in Indian industry*. New Delhi: Friedrich-Ebert-Stiftung
- Deshpande, Lalit, Alakh N Sharma, A Karan and S Sarkar. 2004. *Liberalisation and Labour Market Flexibility in India*. New Delhi: Institute for Human Development.
- Fagernas, S. (2010). "Labour Law, Judicial Efficiency and Informal Employment in India", *Journal of Empirical Legal Studies* Vol. 7(2):282-321.
- Goel, A. and P. Karn (2011). "The Curious Case of Right to Strike Under the Indian Constitution - A Comparative Perspective". *NLIU Law Review*. Kolkata: National Law Institute University Kolkata.
- Hashim, K.S. Mohammad (2008). "Not for the Labour". *Combat Law: Human Rights and Law Bimonthly* vol 7(6): 46-48.
- Mahmood, Z. and S. Banerjee (forthcoming). "The State in Industrial Relations".
- Nonet, P. and P. Selznick. (1978). *Law and Society in Transition: Towards Responsive Law*. Transaction Publishers: New Brunswick.
- Preeta, A.K. (2008). "Marginalised". *Combat Law: Human Rights and Law Bimonthly* vol 7(6): 59.
- Rao, E.M. . 2001. "Globalisation and dispute settlement process " *Indian Journal of Labour Economics* 44 (3):456-474.
- Roychowdhuri, S. (2008). "Class in Industrial Disputes: Case Studies from Bangalore", *Economic and Political Weekly* XLIII (22).
- Papola, T.S., G.S. Mehta and V. Abraham (2008). *Labour Regulation in Indian Industry: A Review of Studies and Documents*, New Delhi: Bookwell.

- Saini, D.S. (1999). "Labour Legislation and Social Justice: Rhetoric and Reality" *Economic and Political Weekly* 34(39): L32-L40.
- Sen, Ratna, 2009. *The evolution of industrial relations in West Bengal, ILO Asia-Pacific working paper series*. New Delhi: International Labour Office, Subregional Office for South Asia.
- Sharma, Alakh N. 2006. "Flexibility, Employment and Labour Market Reforms in India." *Economic and Political Weekly*:2078- 2085.
- Simpson, B. 2007. "Judicial control of the CAC " *Industrial Law Journal* 36 (3):287-314.
- Singh, G. (2008). "Judiciary Jettisons Working Class". *Combat Law: Human Rights and Law Bimonthly* vol 7(6): 24-33.
- Sodhi, J.S. and David H. Plowman (2002), "The Study of Industrial Relations: A Changing Field", *Indian Journal of Industrial Relations* 37(4).
- Standing, G. (1999). *Global Labour Flexibility—Seeking Distributive Justice*, London: Macmillan Press Ltd.
- Thakur, C.P. (2003). "Emerging Pattern of Industrial Relations: From Reality Check to Some Speculation", *Indian Journal of Labour Economics*, 46 (4).
- Tucker, E. (2008). "The Constitutional Right to Bargain Collectively: The Ironies of Labour History in the Supreme Court of Canada", *Labour / Le Travail* 61: 151-180.
- Wekel, S. (2010). "German Labour Courts Struggle with Trifles", *European Labour Law Journal* 1:280-285.
- Welch, R. (1995). "Judges and the law in British Industrial Relations- Towards a European right to strike". *Social and Legal Studies* 4, 175-196.

Report

Caraway, T.L. Final Report: Labour Courts in Indonesia.

Commissioner, R.G.C (2011). *Area, population, decennial growth rate and density for 2001 and 2011 at a glance for West Bengal and the districts: provisional population totals paper 1 of 2011: West Bengal* [Online]. India: India. [Accessed 26 January 2014].

Industrial Disputes Act (1947).
http://pblabour.gov.in/pdf/acts_rules/inustrial_disputes_act_1947.pdf. Accessed on 10.07.14.

Labour in West Bengal (issues 1996-2012). Kolkata: Department of Labour, Government of West Bengal.